



**EDISON ELECTRIC
INSTITUTE**

April 5, 2010

Mr. Terrance L. Breyman
Deputy Associate Director for Natural Resources
White House Council on Environmental Quality (CEQ)
722 Jackson Place, NW
Washington, DC 20503

Submitted via e-mail to: P&G@ceq.eop.gov

Re: Proposed Revision to the Principles and Standards Section of the “Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies”

Dear Mr. Breyman:

The Edison Electric Institute (EEI) is submitting these comments in response to the Council on Environmental Quality's (CEQ's) proposed revisions to the Principles and Standards (P+S) section of the above referenced Principles and Guidelines (P+G) document. CEQ published a notice at 74 *Fed. Reg.* 65102 (Dec. 9, 2009) inviting comments by March 5, 2010, and extended the deadline in a subsequent notice at 75 *Fed. Reg.* 9878 (Mar. 4, 2010) to April 5, 2010.

EEI is the association of shareholder-owned electric utilities in the United States, international affiliates, and industry associates worldwide. Our U.S. members serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. EEI's members rely on water resource facilities and water resource management undertaken by federal agencies to ensure adequate supplies of water for the delivery of coal and other generation fuels and supplies, for cooling water at steam electric plants, for process water used by electric utilities, and for other needs essential to the production and delivery of electricity. In addition, EEI members own and manage hydroelectric power facilities, some located at dams owned by the U.S. Army Corps of Engineers and other agencies. EEI members also own extensive tracts of land that they carefully manage to ensure good environmental stewardship of water and resources. Therefore, EEI and our members have a direct interest in the P+S and P+G documents.

The proposed revised P+S document contains a number of positive features, and properly points to a variety of factors that federal agencies should consider in undertaking water

resource planning. For example, EEI agrees that it is important to evaluate effects of proposed new water resource facilities and management in the broader context of activities already in place and underway in a watershed, at least when the proposed new activities are significant in size and scope. And we agree with many of the tools CEQ recommends that the agencies should use in evaluating these effects, including cost-benefit analysis and consideration of reasonable alternatives - tools drawn from environmental analysis under the National Environmental Policy Act (NEPA). Further, we support CEQ's recognition at page 15 of the draft P+S document that the baseline for review is the present-day environment with existing facilities and management actions in place. We also agree with the statement at page 9 of the document that peer review of applied science and analytical techniques is important to successful water resource planning (and, we would add, to ensure the validity of data and studies relied on in agency decisionmaking in general).

At the same time, EEI encourages CEQ to consider making a number of improvements in the proposed revised P+S document, to ensure that the document can be properly used by federal agencies to improve decisionmaking without becoming an unnecessary impediment to federal actions, including federal permitting of facilities.

To begin with, we would note that the scope of activities to which the document applies is somewhat vague. The “Applicability” section located on an unnumbered page at the front of the draft P+S document says the document applies to “Federal water and related resources implementation studies.” But the P+S document does not really define what such studies are or clarify when or why they are normally undertaken. Further, the document describes a complex set of analyses - patterned after analysis normally undertaken in an environmental impact statement (EIS) under NEPA - that are to be undertaken in such studies, without clarifying how the studies may relate to individual federal agency actions, including new structural and non-structural activities, in a given watershed.

EEI hopes that implementation studies need to be undertaken only periodically, to look at an agency's overall development and management of facilities in a watershed. But we are concerned that instead agencies could be required to undertake the comprehensive analyses anticipated in the P+S document for each and every water-related action, no matter how minor. While the document's level of analysis may be appropriate for reviewing overall management of water in a watershed, say for the Army Corps in considering alternative approaches to managing flows on a river, that level of analysis is unnecessary for each and every water-related action. CEQ should clarify that the complex level of analysis anticipated in the P+S document is warranted only for more significant actions or groups of actions. In addition, CEQ should clarify that the analyses anticipated in the document, when warranted, can be undertaken as part of NEPA analyses and are not intended to require analysis duplicative of that under NEPA.

EEI appreciates and supports the statements, on page 4 of the P+S document, that the document applies only to federal facilities, not non-federal ones, and does not apply to regulatory actions, which we take to include permits issued under the Clean Water Act and Federal Power Act, among others. These statements should help to avoid inappropriate application of the principles and standards in contexts where environmental effects, including water resource effects, are already fully addressed or where federal interests are simply not involved.

Similarly, we appreciate the statements at pages 1 and 9 of the draft P+S document that the level of analysis to be undertaken in implementation studies should be commensurate with the “potential decisions” involved. We encourage CEQ to highlight this, to ensure that agencies tailor their analyses to the nature, scope, and effects of the activities being reviewed.

The overall focus of the draft document is on complex analyses typically undertaken in EISs under NEPA, at a watershed scale and even beyond, across air, land, and water media, taking into account uncertainties and risks including climate change. See for example pages 6-8 of the draft P+S document. However, such analyses would be imponderably complex. We question how an agency is supposed to undertake such complex analyses, in particular as part of its day-to-day operations. Further, CEQ also needs to recognize that some effects - such as the effects of climate change at a local level - are so speculative, their consideration is likely to be difficult or impossible and unproductive. CEQ should apply a rule of reason as to factors to be considered by agencies in making their decisions.

EEI encourages CEQ to recognize that federal agency water resource management has important implications for the nation's economy and energy supply, including electricity generation and delivery, and that these implications need to be taken into account in undertaking water resource implementation studies. The proposed revised P+S document could be mistaken to elevate environmental considerations to the fore, without recognizing that existing and new energy infrastructure are needed to ensure a reliable and affordable supply of electricity to the nation's homes and businesses. The document should ensure that vital infrastructure, and the water resources needed to manage it, are not lost or devalued in the analysis.

We also encourage CEQ to recognize, for example at page 6 of the draft P+S document, that not all development in a flood plain is inappropriate or to be discouraged. Similarly, we encourage CEQ not to express such a strong bias against structural measures, for example at page 23 of the draft document. We understand that locating new homes and businesses in a flood plain should be avoided when possible, to avoid recurring problems with flooding and having to rescue and rebuild such homes and businesses. However, facilities such as dams, levees, and cooling water intake structures are necessarily built in flood plains, and they provide vital infrastructure that is needed for the production and delivery of electricity, in addition to enabling navigation,

commerce, flood control, drinking water supply, irrigation, habitat, and myriad other productive uses of our nation's waters. The P+S document needs to recognize the importance of such facilities.

EEI members own energy infrastructure that is considered critical infrastructure under the Department of Homeland Security's National Response Framework (they are covered under Emergency Support Function #12, and Homeland Security Presidential Directive 7, “Critical Infrastructure Identification, Prioritization, and Protection”). Despite this recognition of the importance of critical infrastructure, the new P+S document would create a decision framework that, if strictly followed, would lead federal agencies to forgo the protection of critical infrastructure from floods and coastal storms to avoid any adverse consequences to the environment. It does not make sense for the nation to create a policy statement that elevates the protection of the environment over all other resource uses and needs.

In addition, EEI members receive coal that is delivered on the inland waterways, like the Ohio River. Secure delivery of coal is critical for maintaining our energy supply. So navigation projects also are important to EEI members. However, the draft P+S document does not translate well for navigation projects. It tries to make every project into a multi-purpose project aimed at solving “problems” in a watershed. At a minimum, this raises questions about agencies being able to develop focused facilities, such as navigation facilities, with appropriate environmental mitigation. And the draft P+S document could substantially increase the cost of such projects, leading the federal government to incur additional costs for environmental projects near inland waterways when those federal dollars might be better spent elsewhere.

The language in the draft P+S document on mitigation, calculation of environmental costs and benefits through the use of stated preferences (*i.e.*, contingent valuation), and the discussion of NEPA, could have broader impacts beyond water resources projects. For example, they could be applied in the Clean Water Act section 404 permits and the public interest review the Corps conducts when evaluating permit applications. CEQ should not try to change or reinterpret existing regulatory reviews through this document. Furthermore, CEQ should ensure that contingent valuation, if and when used, is used very carefully and subject to stringent peer review.

Finally, EEI encourages CEQ to ensure that the alternatives analysis anticipated in the P+S document is kept reasonable. CEQ should clarify, at pages 8 and 15, that the focus of the alternatives analysis, when such analysis is warranted, should be on options for addressing the goals of the proposed project. In other words, an alternative is “effective” only if it will achieve the basic goals of the proposed project. CEQ suggests that this is the case in paragraph #6 on page 17, but that point is lost in the overall document.

In conclusion, EEI encourages CEQ: (1) to clarify the nature of activities covered by the draft P+S document, ideally focusing on periodic review of overall management of a

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watershed rather than individual federal agency actions; (2) to highlight that agency reviews under the guidance should be tailored to the nature and extent of the activities being reviewed, to avoid turning each water resource action into a full blown EIS-style analysis; (3) to recognize that having to evaluate effects for entire watersheds and beyond may make analyses impractically complex, especially for relatively modest activities and for large watersheds; (4) to recognize that water resource structures (even in flood plains) play a vital role in providing public and environmental benefits, including energy, flood control, drinking water, irrigation, and navigation, so CEQ should not take such a negative position on them; (5) to reflect that energy is a vital public resource that needs to be taken into account in water resource decisions, e.g. in terms of availability of cooling water, coal supply, and hydropower; (6) to clarify that only alternatives that meet project purposes need to be considered, as suggested on p. 17 of the draft document under item #6; and (7) to retain the proposed recognition at page 15 that the existing environment is the baseline and the preference at page 9 for peer reviewed information.

If CEQ has any questions about these comments, or needs additional information, please contact either Rich Bozek at rbozek@eei.org or 202/508-5641 or Henri Bartholomot at hbartholomot@eei.org or 202/508-5622. Thank you.

Respectfully submitted,



C. Richard Bozek
Director, Environmental Policy

Attachment

cc: Quinlan J. Shea, III